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II. REAPPORTIONMENT

INTRODUCTION*

In 1981 California Latinos were highly organized under the banner of Californios for Fair Representation.¹ Almost every major Latino organization in the state was part of that coalition. The goal of fair reapportionment and increased Latino representation was one that all Latinos could support. Unlike prior years, Chicanos had a cadre of technical experts, including demographers, businessmen, media experts, community organizers and civil rights experts—all working for a common goal.²

The Californios media committee played a crucial role in the undertaking. The committee engineered and coordinated a public education and outreach program that touched every major population center in the state. Such charismatic leaders as Miguel Garcia (Californios' Chairperson), Dr. Armando Navarro (Executive Director), Leticia Quesada (Los Angeles Regional Representative), and Pedro Carillo (San Jose Regional Vice Chairperson) emerged in the public eye as spokespersons for the Chicano movement. These individuals gave the movement political clout, and their visibility would not have existed without the media coverage engineered by Californios.

Oddly enough, Chicano politicians were not part of the Californios movement. Some criticized Californios as being a pawn of the Republican Party. Most were interested in little more than making their already safe districts safer.

Californios' goal was to maximize the political influence of Latinos. There was no flat percentage approach used to draw the district lines. Since each community, although perhaps predominantly Latino, is unique in terms of national origin, citizenship, education, income, and voter registration rate, local Californios groups drew plans for their areas. Those plans reflected political pragmatism and shared hope for improved representation. Californios did not seek a "guaranteed" Latino seat. An increase in elected Latino representation is something that cannot be guaranteed. Yet the opportunity to offer a candidate which the Latino community might elect can be guaranteed by drawing lines that fairly reflect the Latino population's community of interests.

* By John Huerta, Associate Counsel, MALDEF.

1. See *infra* Section II(A)(3) (Elaine Zamora's discussion).

2. *Id.*

The *Latinos in the Law Symposium*, which in the following panel examines various aspects of the 1981-82 California reapportionment process, highlights the lessons to be learned from Latino participation in that process. Did Latinos have an impact on the final reapportionment plans? If so, what was that impact? And, what did Latinos do that made the difference, if any? Finally, might Latinos have fared better under the non-partisan commission approach to reapportionment which was proposed by Common Cause and the Republican Party? While the panelists disagree on these issues, most of their experience and comments address the Assembly plan. Latinos were also involved in negotiations with key Congressmen, Senators and their staffs.³

In sum, it is my opinion that Latinos in the 1981-82 reapportionment influenced to a great extent the Congressional plan in Los Angeles and to a lesser extent the Senate plan in Orange County.

A. *Impact of Latinos on the California Reapportionment Process*

MODERATOR:⁴

The past twenty years have witnessed a very close relationship between the legal system and the political aspirations of the Latino community. For years there has been a myth perpetuated that Latinos have not participated in the political process because they have lacked political sophistication. However, when one examines the political process, it becomes evident that institutional obstacles have been designed to discourage and to minimize Latino participation in the political process. Consequently, Latinos have not participated or displayed political visibility in a very important institution of our democratic society. Some of the obstacles which have impeded Latino progress in this area include the imposition of literacy requirements,⁵ residency requirements,⁶

3. It should be noted that the following discussion includes an address by Alan Rosin, Staff Director and Principal Consultant to the Senate Committee on Elections and Reapportionment, which did not take place at the actual symposium. See *infra* note 21 and accompanying text. This discussion gives at least one view of the Senate reapportionment process.

4. Dr. Richard Santillán. B.A. (Philosophy & Chicano Studies), California State College, Los Angeles, 1970 & 1972, Masters, California State College, Northridge, 1974, Ph.D., Claremont Graduate School, 1978; Director, Chicano/Hispanic Reapportionment Project, Rose Institute; Research Committee Member, Californios for Fair Representation; Assistant Professor & Chairperson, Ethnic and Womens Studies Department, California State Polytechnic University, Pomona, 1979-present.

5. *Lassiter v. Northampton Co. Bd. of Elections*, 360 U.S. 45, 50 (1959) (a state may apply a literacy test to all voters so long as not discriminatory along race or color lines, in violation of the 14th and 17th Amendments); *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala.) (a literacy requirement which is merely used as a device to facilitate racial discrimination is impermissible), *aff'd*, 336 U.S. 933 (1949). See also *Guinn v. United States*, 238 U.S. 347, 366-67 (1915).

polling taxes,⁷ citizenship requirements,⁸ outright police harrasment,⁹ and racial discrimination and racial gerrymandering.¹⁰

Up to the 1950s, federal and state courts generally stayed out of reapportionment issues. Despite the racial and partisan gerrymandering, the courts reasoned that the reapportionment process was a political matter which did not come within their jurisdiction. This changed in the 1960s when the United States Supreme Court began to dictate to state legislatures what constitutes constitutionally valid reapportionment plans.¹¹ The 1970s witnessed various state reapportionment plans going to the courts.¹² In fact, I would say that almost every single state reapportionment plan in

6. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (state *durational* residency requirements are invalid unless necessary to serve a compelling state interest because they force persons who wish to travel and change residences to choose between travel and the basic right to vote). *But see* *Lassiter v. Northampton Co. Bd. of Elections*, 360 U.S. 45, 50-51 (1959) (a residence requirement is of course a factor which states may look at in determining voter qualifications so long as nondiscriminatory).

7. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667-68 (1966) (a state's conditioning of right to vote on payment of a fee or tax violates the equal protection clause of the 14th Amendment). *See also* U.S. CONST., amend. XXIV, § 1 ("The right of citizens to vote in any primary or other election for [federal representatives] shall not be denied or abridged . . . by reason of failure to pay any poll or other tax.").

8. Although the U.S. Constitution prohibits the states from categorizing persons into subcategories of United States citizens and aliens for most purposes, *see Mathews v. Diaz*, 426 U.S. 67, 85 (1976), it only protects the right of "citizens" to vote. U.S. CONST., amend. XXIV, § 1. Aliens do not generally enjoy the suffrage right. *Calderon v. City of Los Angeles*, 4 Cal. 3d 251, 260 n.7, 93 Cal. Rptr. 361, 366 n.7, 481 P.2d 489, 498 n.7 (1971).

9. *Scholl v. Bell*, 125 Ky. 750, 788-89, 102 S.W. 248, 261-62 (1907) (an election conducted under police supervision prevented a "free and equal" election by the people at the polls).

10. *Burns v. Richardson*, 384 U.S. 73, 88 (1966) (a multi-member constituency apportionment scheme is constitutionally questionable if it operates to minimize or cancel out the voting strength of racial or ethnic elements of the voting population); *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965) (same); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (equal protection demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races); *Gomillion v. Lightfoot*, 364 U.S. 339, 346 (1960) (racially-based gerrymandering is constitutionally impermissible under the 15th Amendment); *Terry v. Adams*, 345 U.S. 461, 469-70 (1953) (conducting of "white primaries" held to be unconstitutional); *Lane v. Wilson*, 307 U.S. 268, 276 (1939) (where effect of an elaborate state statute denied negroes right to register to vote, it was held impermissible); *Calderon v. Los Angeles*, 4 Cal. 3d 251, 261, 93 Cal. Rptr. 361, 367, 481 P.2d 489, 495 (1971) (where a nonpopulation based reapportionment scheme tends to sharply reduce racial or ethnic group presentation, it is constitutionally suspect). *But see* *Castorena v. Los Angeles*, 34 Cal. App. 3d 901, 919, 110 Cal. Rptr. 569, 581 (1973) (MALDEF argument that past dilution of Chicano political strength led to neglect of municipal services in the barrio, i.e., municipal employment, was rejected by the court because no guidelines were furnished with which a court could rule against the adopted councilmanic redistricting plan).

11. *Reynolds v. Sims*, 377 U.S. 533 (1964). *See also supra* note 10.

12. *Legislature v. Reinecke*, 10 Cal. 3d 396, 400, 110 Cal. Rptr. 718, 720, 516 P.2d 6, 8 (1973) (California Supreme Court approved Special Masters' Report on proposed reapportionment, whose goal it was to accomplish "fair and reasonable" reapportionment in the "whole state"); *Calderon v. Los Angeles*, 4 Cal. 3d 251, 261, 93 Cal. Rptr. 361, 367, 481 P.2d 489, 495 (1971); *Castorena v. Los Angeles*, 34 Cal. App. 3d 901, 904, 110 Cal. Rptr. 569, 571 (1973). *See also* *Silver v. Brown*, 63 Cal. 2d 270, 46 Cal.

the southwestern states ended up in the courts, filed by such groups as the Mexican American Legal Defense and Educational Fund.¹³ This year's plan is no different than the reapportionment plan in the California Senate, Assembly and Congress which went to the California Supreme Court in 1973.¹⁴

Due to lack of political participation, it is apparent that Latinos in the past twenty years have had to seek political relief in the courts; we have not had the political muscle to demand justice in the halls of the legislature. Fortunately, the courts have generally responded positively. They have mandated legislative reforms to increase Latino political participation. We must, however, be very cautious, for the courts will not always rule on our behalf. Since the courts are an essentially political body, we cannot become political wards or slaves of the state at the whim of the judicial system. We must participate in the marketplace of ideas, in the political process.

Despite political gain and elimination of some impediments to Latino political participation, there continues to exist at least four obstacles hindering full political participation of the Latino community: racial gerrymandering, at-large districting, the high cost of campaigns, and racial and sex-based discrimination. Moreover, even though reapportionment is an extremely important political issue to the Latino community, most Latinos are unaware of its full significance. This unawareness is, I think, caused by the fact that reapportionment occurs only once every ten years.

Nevertheless, once the United States Census Bureau releases its population figures, each state in the Union is required to redraw or re-align its political districts. Adversely drawn district lines can work a devastating result on the Latino community, for reapportionment will determine not only our political participation, but how limited social resources available through our governmental system will be shared. How district lines are drawn will also determine three very important issues: (1) what political party will be in power until the next reapportionment in 1990; (2) what Latino policies and programs will come out of that legislature; and (3) the degree of Latino political participation in the next ten years. The process of reapportionment nonetheless has within it an inherent conflict. Incumbents will want to maintain their seats and special interest groups will generally seek to increase their political representation.

Rptr. 308, 405 P.2d 132 (1965) (California response to *Reynolds v. Sims*, *supra* note 10; existing districting plan found to violate equal protection clause of 14th Amendment).

13. The Mexican American Legal Defense and Educational Fund, Inc., (MALDEF) is a nationally-based civil rights legal organization devoted to protecting and promoting the Hispanic community's civil rights.

14. *Legislature v. Reinecke*, 10 Cal. 3d 396, 110 Cal. Rptr. 718, 516 P.2d 6 (1973).

The foregoing comments have a bearing on the panel discussions which follow. I will pose a question and each of the four panelists will have an opportunity to respond. Two questions will be asked of each participant. The first question I would like to ask, starting with Assemblyman Johnson, is: *What impact, if any, did Latinos have on the reapportionment process this year in California, and to what factor would you attribute any successes?*

1. Assemblyman Ross Johnson:¹⁵

The ability of Hispanics to effectively participate in the political process is the crux of the issues involved in reapportionment, not just for the Hispanic community, but for all communities within California. Gerrymandering is one means to the end of effective representation. Gerrymandered political districts result in the outcome of elections having been decided before a single vote is ever cast, and that has been the pattern in the Hispanic community over the years in California. Traditionally, Anglo liberal Democrats divide up the pie of the Hispanic community in order to add sufficient Democratic support to their re-election efforts without running the risk of serious challenge from Hispanics.

With these comments in mind, a view of what happened in this past year's reapportionment process is revealing. The Hispanic community was more involved, more vocal, more aware of the issue of reapportionment than ever before. I think a level of sophistication was reached in attempting to influence the process that was greater than ever before. But frankly, my assessment of the results of the effort is that it was pretty much a wash. There was a great deal of talk about increased opportunities for Hispanics and, arguably, in some instances in the long term those may turn out to be opportunities to elect Hispanics to office. But clearly, in the nearer term, the effort was pretty much unsuccessful.

Reference was made to creation of two new potentially Hispanic congressional seats in Southern California in addition to the one seat already represented by an Hispanic. With U.S. Congressman George E. Danielson (Democrat, 30th District, Los Angeles) now out, there is going to be a special election in that district, and that district should have a Hispanic candidate. I would suspect that my colleague, Assemblyman Marty Martinez (Democrat, 59th District, Los Angeles), would be considered the favorite in that race. But Martinez or whoever wins that special election will face in November re-election for a full term in a dramatically different district, a district that includes Congressman

15. Republican, 69th Assembly District, Orange County; Member, Assembly Elections and Reapportionment Committee, 1973 & 1980-81.

John Rousselot and which is far less Hispanic and far more Republican. It is still a Democratic seat in terms of registration, but one far more difficult for a Hispanic facing an incumbent congressman popular within his own party.

Again, the case in terms of the state legislature is the same. There are highly touted districts in my county (Orange County), for example, a senate seat which was ostensibly created as a Hispanic seat, with no Hispanic candidates seriously in the running and no prospect that a Hispanic candidate will emerge victorious there. In the Assembly, the same is true in the San Jose area, in the Fresno area, in the Central Valley districts, and the coastal area of Santa Barbara and Ventura counties, where no Hispanic candidates have come forward and where the traditional liberal Anglo Democratic candidates are going to carry. So my answer to the question of Hispanic impact on the reapportionment process is that there was a much greater awareness on the part of the Hispanic community, a great deal of surface attention paid to their desires. The upshot is probably that you will be no better nor worse in terms of representation in the Congress and in the state legislature than currently.

2. Dr. Bruce Cain:¹⁶

I agree that there was a greater awareness by the Hispanic community in this last reapportionment process. However, I disagree that the results were a wash, and I think it is revealing that Mr. Johnson did not elaborate on the Assembly plan, which is clearly, I think, acknowledged by both the leaders of Californios¹⁷ and by people inside the Assembly to have been the most dramatic instance in which Hispanic lobbying was effective.

There is no question that there was a consolidation of the Hispanic community in a number of seats in the last reapportionment. Why? Number one, there was the direct participation of the Hispanic community. There was also direct participation of my staff. We had numerous Hispanics from the Los Angeles area on my staff who had key roles in designing seats. These included Ricardo Inedo, David Ramirez, Gloria Gutierrez, Omar Vega, Celcelia Santiago, I could go on. They had major roles in designing seats and designing the data base.

Second, the Californios themselves participated. I do not

16. B.A., Bowdoin College, 1970, B. Phil., Oxford University, 1972, Ph.D., Harvard University, 1976; Chief Consultant, California Assembly's Special Committee on Reapportionment, 1981; Professor, California Institute of Technology, 1976-present. Dr. Cain has published in the areas of elections and Anglo-American political systems. His book, *The Reapportionment Puzzle*, will soon be in print.

17. Californios was established in early 1981 to address the reapportionment issue from the Latino perspective. See also *infra* Section II(A)(3).

think you can underestimate Californios' role in determining the Assembly reapportionment result. In at least three instances they were either directly consulted before the lines were drawn or Californios drew the lines themselves. In San Jose in particular, Californios drew the lines adopted between the John Vasconcellos (Democrat, 23rd District, Santa Clara) and Domenic Cortese (Democrat, 24th District, San Benito, Santa Clara) assembly seats. Their proposal seemed like a good one, it had the approval of the press, it had the approval of the community, and so we accepted that plan exactly as it was given to us.

In San Diego, the lines drawn for the 80th Assembly District, which covers the whole of the border between California and Baja California, satisfied the aspiration of the Mexican American community to have a border seat. This line was drawn again in consultation with the Californios and with Pete Chacon's son and with the Assembly staff. Similarly, in Santa Barbara, when we were worried and were in a dilemma about how we would avoid dividing the Piru, Fillmore, Oxnard Hispanic community, in dialogue with the Hispanic community there, we came up with a proposal that linked the Hispanics in Ventura County with Santa Barbara. So in all those cases there was direct participation from the Californios in drawing lines.

We should also not underestimate the importance of the community's indirect participation. The publicity and lobbying efforts had Richard Alatorre and Willie Brown looking over their shoulders, worried that if they did not meet the expectations of the Hispanic community, they would suffer negative consequences. I think that indirect pressure resulted in the seat in Salinas Valley and a seat in the Central Valley being created as well. So I think you can point to very specific gains.

Which one of these actions was most important? Well, certainly legal guidelines are important, particularly in areas like Los Angeles where you have heavy concentrations of Hispanics. The law does not mandate that you affirmatively gerrymander. It says basically that you cannot divide a well-defined community, but the Hispanic community, as opposed to the Black community, is so dispersed in their concentration that you really have to draw non-compact districts to unite their communities. The Hispanic community does not necessarily grow in nice, symmetric forms. And so if you want to observe this community, you have to draw more non-compact lines than you do for the Black community, which is, if you look at a map, much more concentrated in South Central Los Angeles. So you have a different kind of problem when you deal with the Hispanic and the Asian communities than you do with the Blacks. The law says where you have a very

heavy concentration of a minority group, you are not supposed to divide them. But it says nothing about efforts to try to make the proportion of the population commensurate with the representation in the legislature, and that was Californios' and Richard Alatorre's goal. And it took some doing to create more opportunities.

Publicity I think had some effect. I think, though, it is overstated somewhat. I do not think most newspapers are overly sympathetic to the notion that ethnic minorities ought to have representation that is commensurate with their population. I think one of the reasons why public opinion is so against our plan is basically that there are a lot of Anglos out there who really do not care, or if they do care, they care in the wrong way. And so you cannot expect the newspapers to be overly sympathetic. I think it helps that Richard Alatorre and Willie Brown are minorities. I think their ethnicity gave a predisposition to the Assembly plan that they were going to take care of the minority communities.

But I think that the perception of the Californios was correct, that there are a lot of other pressures when you are drawing lines; pressures from incumbents, pressures from counties, pressures from cities, and pressures from the minority party to take other considerations into account. And these things tend to conflict. They do not all fit together into a nice, simple puzzle. In fact, they conflict all the time, and you have to make choices between conflicting values, between preserving minority communities and respecting city lines. And I think outside group pressure is very important in making sure that politicians live up to their commitments.

3. Elaine Zamora:¹⁸

In discussing what impact Chicanos have had on the reapportionment process in California this year, I must admit my biases. As an officer of Californios, I was intimately involved in trying to secure fair representation for the Chicano community. I think that our efforts at Californios contributed to some of the successes in this year's reapportionment process.

I would like to give a brief idea of how Californios was established, what it represented, and what goals it sought to accomplish. In February of 1981 various Chicano organizations met to address the issue of reapportionment. From that coalition of or-

18. A.B., University of California, Berkeley, 1975, J.D., Loyola University School of Law, Los Angeles, 1980. Ms. Zamora served as the Reginald Heber Smith Fellow (1980-82), having worked at the Los Angeles Legal Aid Foundation. She is presently in private practice.

ganizations we developed an organization that came to be known as the Californios for Fair Representation; specifically designed to address reapportionment issues.

Some of the goals we intended to meet within the reapportionment process were as follows. First, we wanted to make the reapportionment process an understandable process; we sought to develop a working knowledge for approaching the process as a whole. Development of that working knowledge, of course, would allow us to have an integral and significant role in determining the composition of districts. Second, we wanted to compel the Legislature to fashion a legislative remedy to correct the present effects of past discrimination in the Chicano community. The development of that remedy required the gathering of Chicano organizations and representatives of the Chicano community to address the reapportionment issue. Finally, our ultimate goal was to seek political influence as a community so as to participate fully in the political process which makes determinations affecting our daily lives. A lot of that included the organizing of our communities, the presenting of technical data before the Legislature, and developing an expertise among a group of people who really had not developed that before.

With the assistance of people such as Dr. Santillán, Dr. Edmundo Navarro, and others, we were able to gain access to the technical data that allowed us to develop that expertise. There were individuals with much expertise in organizing the community, and we were able to use their experience in bringing the coalition together, to exert pressure on legislators, both Republican and Democrat, to demonstrate the needs of our communities. We intended to be an integral part of the reapportionment process.

We did not always receive the kind of response that we wanted, but I think that because we showed expertise and because we developed this coalition, we got the word out into the Chicano community, and we got the community to respond and to understand the effect that reapportionment has on us, that we did indeed have an influence on the process. Whether or not that influence was necessarily appreciated by certain elements in the political process notwithstanding, I think the Chicano community appreciated our efforts.

On the Assembly level we made significant strides for the Chicano community across the state. As representatives of the Los Angeles area coalition, we were not happy with the assembly plan at the local level. However, we did take into consideration all the kinds of pressures, as the representative from the Democratic party indicated, that were involved in drawing districts in areas like Los Angeles. So right now in Los Angeles we have to

depend alot on growth in our communities for the development of those districts.

But on the statewide level, the Assembly plan did develop some very good districts. And on the Senate level, there was created a district in Orange County that is possibly a safe Chicano district, so that if a Chicano candidate ran in that district, he might have a pretty good chance of winning. There was also Congressional District 34, developed in the Whittier/La Puente/City of Industry area, which also has a significant possibility of electing a Chicano candidate.

These were some of our goals and some of our basic approaches. We believe that our participation, which is Californios' theory for fair representation, was successfully accomplished. We participated in the process and we had an impact on the process. As little or as much as our impact may have been, we feel that it was a significant effort and that our participation created at least a presence that the Chicano community had not had before. I think a message that the outside world can gather from our efforts at Californios is that Chicano communities have certain needs, that we have people who can address those needs, and that we will exert the necessary pressures to have those needs met.

4. Walter Zelman:¹⁹

I'll start by saying that everybody before me has been right. All that has been said is the truth. The fact of the matter is that the other panelists have chosen to emphasize the points they are right on, and they have chosen to ignore the points they are wrong on. But what they have said has been right. Let me suggest this in the following way. There is no question in my view that every time I testified on reapportionment before this year I had to follow six or seven Hispanics. There is no question that the Hispanic community was out in extraordinary numbers. They were well versed. They knew what they were doing. They knew what they wanted, it seemed to me, and should have had—if interest group politics has any role in this process or any role in politics—an enormous influence.

Hispanics should have had as great an influence as anybody else, because they were the best organized community in this reapportionment fight this year. Far more so than the Black community, far more so than any other community I could recognize in the reapportionment process. However, one of the great problems

19. B.A., University of Michigan, 1965, Masters & Ph.D., University of California, Los Angeles, 1966 & 1971; Executive Director, California Common Cause, 1978-present. Dr. Zelman has taught political science at UCLA and at other Southern California schools.

was that a lot of this participation occurred before anyone saw the redrawn lines. There were all sorts of hearings and all the Assembly and all the Senate leadership and all the Congressional leadership—well, the Congressional leadership had no hearings at all—but all the Assembly and Senate leadership went to great pains to tell us about these enormous numbers of hearings we were having. And as I understand now, the members of the Hispanic community were deeply involved in the Assembly plan. Most of the plans were presented to the general public somewhere between a week and two weeks before they were approved, with virtually no opportunity for serious comment by the public after the lines were drawn. The Congressional plan was produced and presented to the California press and to the California public no less than 24 hours before it was passed by the state legislature. Nobody had seen those lines, including half the Congressmen. And this was the outrage of the process. There was absolutely no opportunity for participation once the lines were drawn. That is when you really need to see the lines. It is great to be able to testify before and say what should be done. It is better to be able to testify after and say what should have been done. And what ought to be done now, and what changes ought to be made.

Nevertheless, the Hispanic community was extraordinarily present and I suspect did have some influence in some of the district lines. But there was much confusion in press conferences over the congressional seats. Some were boasting as to how marvelously they had gerrymandered certain districts. When the discussion focused on Los Angeles, the cry went up from the press all over the place, "Where are the maps, Phil?" And U.S. Congressman Phil Burton (Democrat, 6th District, San Francisco), who had spent the last year poring over every census tract in California, did not have maps to demonstrate what he had done and the press just went into an absolute uproar. And when somebody from the Senate committee finally produced the maps, the press conference just completely fell apart, and everybody rushed out to look at these maps which nobody had seen.

Did the Hispanics get anything? That is the question here. In the Assembly plan, I think yes. And I think the speaker who alluded to the Assembly plan in great detail is probably accurate. There are a number of seats which contain a higher percentage of Hispanic voters than would probably otherwise have been the case. I know some people who feel that the Hispanics did not do as well as it appears. If you look very carefully at most of those seats, it's not clear that the Hispanics are going to have any greater influence there than they have had in the past or that they are going to produce particularly Hispanic-oriented candidates more so than what is already there.

But on the whole, I would say the Assembly plan is an improvement, but remember who drew it. Richard Alatorre was the chairman of the committee; Willie Brown, sympathetic to the needs of minority groups, was the speaker; and the chief legal consultant on the elections committee was Jim Tucker who was the lobbyist for the ACLU years before working for this committee. It is not likely you are going to get that line-up again. It is sort of like the Jupiter effect—drawing the Hispanic plan.

The Senate plan, from what I have been able to understand, was a disaster for Hispanics. Hispanics should have gotten a second seat in Los Angeles, but none of the Democratic incumbents were willing to give up anything. All of them were running again, so the Hispanics got a seat that is only 28% Hispanic in Orange County, which everyone immediately said, "This district looks like it's tailored for Richard Robinson," who is hardly a Hispanic-leaning Anglo Democrat. He is not running, incidentally, but the other person they thought might win the seat was John Schmitz (Republican, 36th District, Orange County). So it is hardly a marvelous district there, a light bone at best.

The Congressional plan is one of great debate. Burton claims to have created two new Hispanic seats. One of the seats was always overwhelmingly Hispanic—in fact, more so than it is now. The problem is, it had an Anglo incumbent, George Danielson. Well, they got him out by appointing him to a judgeship. But the point is that that seat should have been overwhelmingly and solidly Hispanic. Instead, you have got H.L. Richardson (Republican, 25th District, Los Angeles) running in the general election as a Republican there, and it is conceivable that this solidly Hispanic seat could go to an arch-right-wing Republican.

The other supposedly new Hispanic seat is the 34th, and that's possibly a Hispanic seat, but also very possibly going to a one-by-one, what I would call a very conservative Democratic, Jim Lloyd, who used to represent the Claremont-Pomona area. So it is not at all clear that Hispanics are going to win either of those two seats, whereas in fact under the old districts, with Danielson out, they would at least have been guaranteed one of those two seats. So the Congressional plan is very much up in the air.

I think in summary I would say that there has been some progress, some impact, but you would have expected some progress, given the population changes of the last 10 years.²⁰ You might say, finally, that the Democrats are always going to run into a problem when drawing political lines for the Hispanic community. The problem is that the interests of Democratic incumbents, as I think was alluded to here earlier, do not necessarily run on

20. See *supra* Section I(A) (Dr. Estrada's discussion).

the same wavelength as the interests of expanding Hispanic representation. The problem is that the party in power wishes to elect its party members. And often the easiest way to do that is to divide minority communities so that they bolster a lot of Anglo Democrats, not because they are Anglo, but they just happen to be. So that they bolster Anglo Democrats, rather than put enough Hispanics or Blacks into a district to guarantee that they can really dominate that seat. That, in effect, ends up usually winning the seat by 70% or 80% which in classical gerrymandering terms, wasted 30% of your vote.

5. Alan G. Rosin²¹

California's Hispanic community can be complimented for its efforts to impact the 1981 reapportionment. Its attempt to gain adequate political representation are in the most fundamental traditions of democracy.

Hispanics were visible throughout the 1980-81 reapportionment process. At the many reapportionment hearings held throughout California by the Senate Elections and Reapportionment Committee in 1981, Hispanics forcefully advocated in favor of enhanced legislative representation for their communities.

Increasing the opportunities for minority groups to participate within the government processes clearly was one of the difficult but desirable tasks faced by the Senate in its 1981 reapportionment. Testifying at many public hearings, as the Hispanics did, is one appropriate approach to influencing the legislative process.

In order to have real impact upon the legislative process, however, and in addition to such a public and publicized approach, Hispanics could have benefited by interaction with legislators and their staffs upon a more personal, less public basis. There is evidence that Hispanic reapportionment leaders tried this with the Assembly reapportionment in 1981; they did not do so with regard to the Senate.

A decade ago, in the 1971 reapportionment, both public and clandestine cooperation existed between Hispanic reapportionment leaders and the Senate reapportionment leaders and staff.

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[The following discussion was not presented at the March 21, 1982 symposium. Rather, it is the result of a request by State Senator David Roberti, Senate Pro Tem, to allow a response from his Elections and Reapportionment Committee to the issues presented by the moderator. *Editor.*]

This close cooperation then led to the creation of the first Hispanic Senate seat in California.

Regretably, in the 1981 reapportionment process, there was clash and conflict between new Hispanic reapportionment leaders and the Senate. Many persons involved in the 1981 senate reapportionment believed that some Hispanic reapportionment leaders deliberately created controversy with the Senate in order to advance their own Hispanic organizational efforts, cohesion and image. One has but to read some of the Senate hearing transcripts to sustain such a conclusion.

If this be true, why would Hispanic reapportionment leaders create such conflicts with the Senate, and not the Assembly or the Congressional delegation? One can only conjecture. The Senate already had the best record with regard to Hispanic representation through the 1970s. In 1981, however, larger Hispanic gains, realistically, could be visibly obtained primarily in the Assembly and Congressional reapportionments.

Often it is a combination both of controversy and accomplishments with external groups and institutions that helps to build a coalition—as Hispanics were creating in the 1981 reapportionment.

Interestingly, as mentioned above, in evaluating Senate reapportionment, one reason why Hispanic reapportionment leaders may *not* have focused upon the Senate for reapportionment gains, is the fact that before the 1981 reapportionment began Hispanic representation already was higher in the Senate than it was in the State Assembly or the California Congressional delegation. Proportionally, there were more Hispanic members in the California Senate than there were members of either the California Assembly or the California Congressional delegations in 1980.

Mr. Walter Zelman of Common Cause, in his earlier remarks above, states that “Hispanics should have gotten the second [Senate] seat in Los Angeles [in the 1981 reapportionment]”. In point of fact, Mr. Zelman simply is in error; he has his facts wrong. Hispanics already had a “second” Hispanic Senate seat in Los Angeles before the 1981 reapportionment even began (Senate Districts 24 and 26). Moreover, from the Los Angeles County-San Bernardino County areas, there were *three* Hispanics serving in the State Senate in 1980, before this reapportionment began.

This better Hispanic proportional representation in the 1980 Senate was the result of the Senate’s concern for Hispanic representation in its 1971 reapportionment. In 1971, during that legislative reapportionment a decade earlier, some Senate leadership and staff had been adamantly committed to creating a new Senate district from which an Hispanic could be elected. This was at a

time when no Hispanic had served in the California Senate, at least not in modern California history. In 1971, the Senate reapportionment leadership ultimately made this policy decision—one strongly resisted by some Senate Democrats as well as Republicans because it did “sacrifice” an incumbent Senate Democrat—to create such a new “Hispanic” Senate seat.

This Hispanic seat was created as a district in which no then-current Senate incumbent resided, and it was an urban seat encompassing much of the area of East Los Angeles. This, now, is of note because that commitment to an initial urban Los Angeles Hispanic Senate seat seemed a first step to any kind of Hispanic representation.

That Senate first-step, taken in 1971, was followed in 1973, when the California Supreme Court performed the reapportionment. Its proposal followed the conception initially advocated in the Senate’s 1971 proposal. As a result of the Supreme Court’s 1973 reapportionment, the 1974 election resulted in a Hispanic elected to the Senate for the first time in modern California history.

By 1980, three Hispanic incumbent senators were representing urban Los Angeles and the Los Angeles-San Bernardino county areas (Senators Alex Garcia, Joseph Montoya and Ruben Ayala). Thus, in the 1981 reapportionment, there was opportunity for a new concern, a second step, so to speak, in the Senate’s approach to reapportionment. This was appropriate because it did not seem politically and demographically possible to further enhance Hispanic Senate representation for the Los Angeles area.

It is appropriate now to turn to what the Senate proposed to do and did in its 1980 reapportionment. For the 1981 reapportionment, each California State Senate district required a population of almost 600,000 people. Such districts are the very largest legislative districts within California and probably within the nation. They are twice the size of California Assembly districts and even larger than the California Congressional districts. The meaning of this for creating compact legislative districts with high percentage concentrations of Hispanics is obvious: to have a 33% (one-third) Hispanic concentration for instance, in an Assembly district requires only 100,000 Hispanic inhabitants concentrated within that district. However to obtain that same 33% Hispanic concentration within a State Senate seat requires *double* that Hispanic concentration, i.e., approximately 200,000 Hispanic inhabitants.

To develop such a concentration of Hispanics, and also to produce a reasonably compact contiguous district is difficult because of the trend (already mentioned by the Assembly’s speaker

herein) in Hispanic housing patterns in recent years. As Hispanics become increasingly affluent, they do not remain within traditionally Hispanic geographic areas, but "assimilate" into suburban, often "Anglo" areas. This movement dilutes the Hispanic concentrations and hence their political power and it can complicate reapportionment, although it may be desirable for other reasons.

The size of Senate districts, then, and population shifts, make it often impossible and frequently difficult to avoid some dilution of minority populations or the inclusion of some conflicting ethnic interests within Senate districts.

However, as indicated earlier, as the 1981 reapportionment commenced, the 40 member California Senate had three Hispanic incumbents (four Hispanics, if Republican Senator Marz Garcia of Portuguese ancestry, is counted as "Hispanic"), a proportionally greater Hispanic representation than in either the California Assembly (with four Hispanics among its 80 members) or the California Congressional delegation (with a single Hispanic among its 43 members).

The Senate began its 1981 reapportionment with the 1973 court-drawn district lines and made adjustments to those lines. With regard to Hispanics, a first priority was retaining strong districts for the three Hispanic incumbents from the Los Angeles-San Bernardino area.

In the urban metropolitan Los Angeles County area all possibilities for enhancing Hispanic representation were considered. Senator David Roberti's 23rd Senate District was a good example of the problems faced in this area. Hispanics advocated an increase in the number of Hispanics in this district. However, an increase in the Hispanic population in Senate District 23 would have further diluted its sizeable Asian population and also "wasted" the added Hispanics. With Senator Roberti's decision to run for election in Senate District 23, Hispanic leaders would not be inclined to run against him. He had defeated Hispanic opponents in the last decade, and had, in any case, been responsive to Hispanic interests. By 1981, Senator Roberti was the elected leader of the Senate. It was decided that such action as adding many new Hispanic inhabitants to the 23rd Senate District would not really enhance Hispanic representation therein.

Similarly, the Hispanic population had spread into Black districts. Due to the intermingling of minority groups in a county that had suffered population loss, the formation of a new Hispanic district there posed a very real possibility of diluting the power of another ethnic group, or even jeopardizing a minority incumbent. As said before, creation of a 4th seat for an Hispanic in Los Ange-

les County-San Bernardino area at the expense of Black or Asian political and electoral influences was deemed unsatisfactory.

Therefore, in the Senate, the policy judgment was made to enhance Hispanic political representations and influences in the rural great Central Valley, in Monterey, and in the growing urban area of Orange County. A new Orange County Senate district was drawn specifically for the purpose of enhancing Hispanic participations in the Orange County electoral process. By consolidating Hispanics within Orange County into one Senate district a 28.3 percent Hispanic registration was achieved; which will likely continue to increase, providing an eventual opportunity for election of an Hispanic representative, and certainly providing a Hispanic impact upon whomever is elected from that district.

Mr. Zelman's assertion that that Orange County senate district was created for an incumbent Anglo assemblyman or an incumbent senator is absolutely false. The assemblyman and the senator named by Mr. Zelman (Assemblyman Robinson and Senator Schmitz) do not even live within the newly created senate district. Moreover, I can state categorically that no such considerations (as suggested by Mr. Zelman) existed in the motives of those who designed that district.

With regard to rural Hispanics, it was common knowledge that Senator Mello, in the 17th Senate District (Monterey area) and Senator Walter Stiern, in the 16th Senate District (Central Valley area) desired to respond positively to rural Hispanic concerns. It was felt that some other representatives within the Great Central Valley of California might be more responsive to grower concerns than to those of rural Hispanics. Thus, on balance, Hispanic populations in the 1981 reapportionment were aggregated within senate districts where not only the representation of Hispanics could be enhanced, but the impact upon incumbents would be substantially greater as well.

This seemed a realistic recognition that merely placing a large Hispanic population within any district does *not* guarantee or even enhance Hispanic ability to elect "one of their own".

The United Farm Workers of America, an organization that significantly speaks on behalf of rural Hispanics, clearly recognized this approach and endorsed not only the new districts served by Senator Stiern and Senator Mello (Senate Districts 16 and 17, respectively), but endorse the entire Senate reapportionment plan as adopted by the Legislature on September 16, 1981.

Specifically, District 16 was altered as follows: Kings County, one of the four California counties covered by the federal Voting Rights Act, was removed from the existing 15th Senate District, and with its Hispanics, placed into a better position in

Senator Stiern's 16th Senate District. The addition of Kings County to the 16th District meant that that district would contain 22.1 percent Hispanics (an increase from 15.5 percent Hispanic), 10.9 percent Blacks, and 2.2 percent Asian, for a total minority population of 35 percent. This created a senate district where an already sympathetic representative could respond to minorities that would comprise one-third of the constituency. This was one of the proposals endorsed by the United Farm Workers' legislative representative before the Senate Committee on Elections and Reapportionment.

Another Voting Rights Act county, Merced, had been within the existing 14th Senate District, which had been 25 percent Hispanic. It is true that the Hispanic population percentage in the 14th Senate District decreased by the transfer of Merced County into this new district, which also encompassed the County of San Luis Obispo with its less than 10 percentage Hispanic population. This change, however, also increased the Hispanic population percentage in the Monterey-San Benito-Santa Clara District (Senate District 17) from 18.8 percent to 22.4 percent. When combined with a proposed Black population of 3.8 percent and an Asian population of 5 percent, the minority percentage in that district jumped to over 30 percent. The United Farm Workers Union also endorsed this proposal.

The Senate believed these were subtle, but significant changes that enhanced the political position of California's *rural* Hispanic citizens. In addition, they impacted favorably upon Monterey County, also covered under the Voting Rights Act.

In summary, the two Los Angeles districts in the 1981 Senate reapportionment plan were retained with Hispanic populations well over 50 percent (55 and 71.1 percents). In addition, there were eight Senate districts over 25 percent Hispanic, and seven more Senate districts over 20 percent Hispanic, for a total of 17 districts with a good Hispanic base, including the newly-created Senate district within Orange County that was over 28 percent Hispanic.

From an overall perspective, the Senate believed that in its 1981 reapportionment, it continued the concerns and accomplishments with Hispanic representation that it had begun with its 1971 reapportionment. Notwithstanding this belief, however, little of the Senate's 1980 approach had been discussed in advance with any of the leaders of the 1980 Hispanic reapportionment coalition. As a result, the impact of that new coalition upon the 1981 reapportionment was quite minimal.

Why had this been the case? Obviously, there were no channels of communication and consultation established by or with the

Senate by the Hispanic coalition in 1980-81, although there had been such channels established in 1970-71.

As to why this difference existed, why things had become less cooperative over the decade, there are only still suspicions on both sides. Some believe that the answer is simply inadvertency.

Others in the State Senate believe that the Hispanic coalition deliberately eschewed communication, preferring confrontation and the publicity that occurred as a result in the media. One of the Hispanic coalition's leaders and "experts" was at the same time also a paid employee of an institute which many Democratic Senators believed had been set up by the California Republican Party and the 75 largest business corporations in California to make Democrats look bad in reapportionment. The Hispanic coalition, then, was seen as part of that strategy.

In contrast, the Senate's 1981 reapportionment approach was communicated to and received the endorsement of the United Farm Workers. But that stemmed from a long-standing relationship of working together, with respect and trust upon legislative issues. No such prior history of working together or trust or credibility existed between the new Hispanic coalition's leaders and the Senate and its staff.

Finally, in evaluating any reapportionment, it is important to view the treatment of minority groups within the totality of the reapportionment process, rather than in isolation. A multitude of factors had to be considered in drawing Senate district boundaries. These include: federal and state law and court decisions, shifts in population over the past decade, the growth and housing patterns of particular minority groups, protection of incumbents (some of whom are minorities), problems of following city and county boundaries, and even the conflicts among different minority groups for adequate representation. Additionally, all of this in reapportionment occurs under great pressure, amidst many other issues upon the Legislature's agenda.

B. Impact of a Non-Partisan Reapportionment Commission on the Influence of Latino Representation in the Political Process

MODERATOR:

Dr. Zelman was just alluding to the inconsistency of the present reapportionment process. Incumbent party members seek to maintain control of district seats, in disregard of the community's needs. If the highly political reapportionment process is inherently evil, what other remedy do we have? Seventeen of our fifty

states have chosen a different approach.²² They have decided to take the reapportionment process away from incumbents and put it into the hands of a non-partisan commission.

Presently, there is a petition and initiative being promoted by the Californios, Common Cause, and the Republican Party to put the non-partisan commission issue on the November 1982 California ballot. The initiative, if passed,²³ would allow a commission to work out the reapportionment process for the 1984 elections. So the second question we will address to our panelists is: *What impact do you feel a non-partisan commission, if approved, would have on the influence of Hispanic representation in the political process?*

1. Dr. Walter Zelman:²⁴

Proudly I should say Common Cause is one of the initiators of that initiative and never, as would I consider myself to be a fairly progressive Democrat, have I taken more flak from more of my friends and felt myself to be more right at the same time. The simple reality is this. Reapportionment is the most blatant conflict of interest in all politics. Forget for a moment the question of Hispanic versus something else. Think of the reality of going to Sacramento and drawing the seat by which you will then seek reelection. That, I suggest to you is a fundamental slap in the face of what we would call accountable and good government in democratic government today. I suspect if we put the question before the California voters, how should district lines be drawn and list 10 bodies that should redraw the district lines, the group getting the fewest votes would be the present incumbents or the state legislature. I do not care what nine other groups you list, incumbents would come out at the bottom.

This is a great constitutional decision, of course. We are told that the founding fathers did it this way, and it's been this way for 200 years. Well, I defy you to find more than about three sentences in all the notes on the Constitutional Convention that addressed this question in any detail. Nobody even gave it any thought at the time. The states will do it, they will redraw the lines and nobody gave much thought to it.

22. These seventeen states have enacted reapportionment commissions charged with varying duties. These states include: Alaska, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Maine, Michigan, Missouri, Montana, New Jersey, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont. Some of the commissions adopted in these states are only advisory, others have actual power to reapportion, others are used only as back up in case the state legislature cannot agree on a plan.

23. The non-partisan commission proposed was not passed by California voters in November 1982.

24. See *supra* note 19.

What does current federal state law give minority communities in California? The answer is, nothing. If you get an absolutely vicious gerrymander, perhaps you can get a court to kick it out. But there is absolutely nothing in the United States Constitution, in the state constitution, or in California law that gives minorities any guarantee of fair and effective representation. Democrats are proud when they talk about Proposition 6, which they drafted and which was on the ballot in 1980.²⁵ It says nothing about minority communities. If Democrats were so concerned about the fair and effective representation of minority communities, they could have written something into Proposition 6. They did not. It is a bland piece of nonsense that says nothing and had virtually no impact on the 1982 redistricting plan.

What does the Common Cause/Republican Party proposal give to minorities? Three things. First, it states at the very beginning what the major criteria of redistricting ought to be. Fair and effective representation for all citizens of the state, including language, "ethnic and racial minority groups," the first group mentioned as deserving of special attention in the reapportionment process.

Second, our proposal guarantees minority groups a place and a role on the commission. The people who appoint the final members of the commission are told that the commission must be diverse in terms of social, ethnic and geographical factors.

Third, and most important, the commission—and this is something that Common Cause fought very, very hard on, against the Republicans in many cases and against the business community, and we won—takes all those old good government criteria of compact districts, and do not cross county lines and all those things, and makes them clearly subservient to the larger and more important criteria of fair and effective representation, including the language, "racial and ethnic minority groups."

What we were concerned about is that if you draw those neat little boxes, you are going to underrepresent minority communities all over the state, because that is the way that Republicans especially have gerrymandered against minorities in the past, by creating districts that are 90% Hispanic, and the Hispanics win that seat and have no influence on the surrounding four seats. That is what we were adamant about avoiding, and we think we have avoided that. In this respect, to quote one of the comments mentioned earlier by one of the other speakers, "Our proposal allows for gerrymandering to help minority groups." It recognizes

25. In 1980 Proposition 6 laid out certain criteria for the legislature to follow in reapportionment.

that you may have to draw some slightly stranger lines in order to provide fair and effective representation.

Now you may say, "What's fair and effective representation?" Well, I can not tell you that, because in some cases the minority community may want a minority representing that seat, in which case they may say, "We want 50-60% of this seat." On the other hand, they may be thinking about general influence, and they may say 30-40%. That is not up for me or any one individual to define.

Now, the Democrats complain and they suggest that minority communities would be much better off with the present process. Well, that I think assumes first of all that the Democrats are in power. If Republicans were in power, you would never see the sixteen 30% Hispanic seats you saw this year. So minorities have to keep that in consideration, that they are really only talking about a good Democratic plan versus the commission.

The second thing that people always note in opposition is that commissions in other states have not worked. Well, that is true in part. The nine or ten commissions that actually do it this way in other states have had spotty records. But they are all terrible commissions, and they are all obviously terrible commissions for obvious reasons. They all suffer from one of two obvious flaws. Either they say that certain people shall sit on the commission or make appointments to the commission and they tick off five officers of the state who obviously, if they fall one way or the other partisan-wise, will create a partisan commission.

The second thing unsuccessful commissions do is say, "We'll take four Democrats, four Republicans," or "two Democrats, two Republicans," and they will pick a tiebreaker. One saint will come down and supervise this process.

The Common Cause/Republican Party proposal does not rely on that. We have a much more subtle and much more sophisticated plan that does not take the politics out of redistricting. We think that reapportionment is going to be a war on this commission. Just as it is in the legislature. The difference is, it will be a fair war, with both sides equally armed and played according to different rules with open hearings and with different criteria than the legislature currently conducts the present war.

2. Dr. Bruce Cain:²⁶

The Jupiter effect alluded to by Mr. Zellman is one of those things that scientists have found to actually occur at regular intervals. You might bear that in mind when you make a prediction about what might happen to leadership in the future.

26. See *supra* note 16.

The question of whether or not the commission idea is an advance on the present system is a very difficult question to answer. I would have preferred to see the commission be more explicitly bipartisan. I do not believe there is any such thing as a non-partisan person, and I think the four people who are being appointed on the grounds of being non-partisan, or whatever the number is, will be partisan. I think the selection process will be shown to be a sham.

But I think the parties will take care of themselves. The way it was set up, with each party having an ability to veto a final plan, will ultimately mean that any kind of plan that emerges out of such a commission will have to be a bipartisan gerrymander. By the way, every plan is going to have a bias. Every plan is going to have a slant. And therefore every plan is going to be a gerrymander in some sense. It is going to have an intention to it. It is going to favor some groups and not others. You can have a bipartisan, you can have a partisan, or you can have an affirmative action gerrymander, and those are your choices. And you can have variations on those choices. The way the Common Cause/Republican party commission is structured, it is a bipartisan gerrymander. It is one that you are going to have to get both parties to agree to, it is one that is going to protect the incumbents of both parties, make them somewhat safer, somehow evenly split the numbers of collapses and seats it creates.

I think the proposed commission will make the Republicans a lot happier because they can veto anything that they do not agree to and it will go to the courts. I do not worry so much about the partisan aspect of that plan as I worry about the minority aspect of that plan. I think there is a potential problem. The commission may take care of the minorities. It is possible, but I do not think minorities have any guarantee. And I think the Latino community cannot build its political future on the good intentions of a bunch of Anglo commissioners or possibly one or two token Hispanics. I think that what you have got to do is have a political system where you can put the heat on. You have got to be able to threaten people. You have got to influence them. You have got to be able to say, "Hey, listen, I'm not going to vote for you" or "I am going to take your money away from you," or "I am going to make a stink," or "I am going to do something, but I'm going to burn your ass if you do not give me what I want." I think if you depend upon the good intentions of a bunch of Anglo academics like me, or a bunch of well-meaning lawyers like UCLA turns out in droves every year, I think you are a bunch of fools.

Now, let us get to the issue of this commission's composition. We know damn well they're going to end up being academics and

lawyers. There may be one or two token Hispanics. There is an exhortation in the commission proposal that minorities be considered in the composition, but Lord only knows what happens if the four senior appellate judges happen to be Republicans who are not terribly happy about minorities, whether or not you will get an appointment. And who knows whether you will get somebody like Richard Santillán, who will be fine because he cares. But you may well get a Latino who is not particularly interested or who is not willing to push or is not very good at fighting. So you have no guarantee that you are going to get somebody who is going to be effective. I think the real basis for power in the political system in a pluralist system is the ability of an interest group to mobilize and bring pressure upon politicians. And there are ways of making them feel the pressure, and I think that was very apparent in the Assembly plan. I think you had Richard Alatorre and Willie Brown looking over their shoulders, and I do not think it was simply that they were fellow minorities. I think they knew that they had things to lose if they did not deliver the goods, and I worry very much about a commission composed of people who are basically unaccountable.

It is a shame that people disagree. It is a shame that they disagree about reapportionment, it is a shame they disagree about issues, but it is a fact of life. It would be nice if there were such a thing as the "public interest." But the fact of the matter is, I have been trying to do a little fundraising for Richard Alatorre, and I have learned a lot about my fellow Anglos and that is, they are not very sympathetic to the goal of giving minorities representation that is proportionate to their numbers in the population. That is a fact of life. I can just tell you that. And so, I am not overly sanguine about the prospects of representation for the Hispanic community unless you go out there and you mobilize it for yourself. And I think you should pick the system that gives you the most access, that gives you the most leverage. And if it is the commission, then you go with the commission. If it is a political process where you can bring pressures upon politicians, then you go with that process. And that is how I think you ought to make your decision.

3. Elaine Zamora:²⁷

A non-partisan commission like the one outlined by Dr. Zelman would not serve the Chicano community's best interests. To show why this is so, let me review how appointees will be chosen to this commission. It is my understanding that there will be a chairperson and three committee people appointed by a panel of

27. See *supra* note 18.

seven California Court of Appeals justices. Another three persons will be appointed by the political party that had the highest number of registered voters in the last election. Three more persons will be appointed by the political party which had the second highest number of registered voters in the last election. And one person may perhaps be appointed by any other political party that has a ten percent membership in the legislature.

Now this scenario tells me that the California Court of Appeals will appoint four people, the other two will come from either the Democratic or the Republican Party; the third one perhaps from the Libertarian Party, or any other party with a ten percent membership in the state legislature. Because the Chicano community presently has inadequate access to both of the major political parties and to the Court of Appeals, the impact of the proposed non-partisan commission would be adverse to Chicano interests. There would be little or no representation of the Chicano community's interest in this process because we would have no input. The committee structure itself does nothing to encourage representation which is responsible to our needs. We would not have direct access to legislators as constituents, so the process would be one step further removed than what presently is the case.

Representatives under the present reapportionment process at least have a responsibility to represent their constituents' interests; thus, special interest groups have the option to organize a constituency to lobby legislators. The Chicano community can have an influence by putting pressure on individual legislators, whether we have in a Republican or a Democratic district. Therefore, we presently can attempt to make our representatives responsive and accountable for their actions.

Californios holds the position that a non-partisan commission would be unapproachable. Our effectiveness would be significantly diluted. To have any kind of an effect on this non-partisan reapportionment process, we would have to have access, we would have to be influential with the political party that determines the appointees. Until adequate access is obtained in this aspect of the process, we really cannot be effective in a non-partisan reapportionment process. We of course can continue to advocate for the Chicano community before this commission, but our roles will have to be that of advocates as we have been all along because we do not have direct access. I can guarantee that we would not have people who would be responsive to the Chicano community sitting on the commission. We do not stand to gain under either process because in both processes we have no direct access or influence. I would conclude by saying that neither a non-partisan commission nor the present reapportionment process will ade-

quately meet the needs of our community if we do not participate in the process.

4. Assemblyman Ross Johnson:²⁸

I have historically opposed the notion of a reapportionment commission and have only reluctantly come to a position of supporting it because I am convinced from my direct experience in the last two reapportionments, and having watched, researched and studied the last four reapportionments in California, that the way it is presently done is a disservice not only to the Hispanic community but to all of the citizens of California. There has to be a better way. Although I am sympathetic to the comment that Hispanics not trust the Anglo politicians or lawyers, that is precisely what the Hispanic community has done, what they were forced to do in the 1981 reapportionment process. Assemblyman Richard Alatorre (Democrat, 55th District, Los Angeles) and Senator Dan Boatwright (Democrat, 7th District, Contra Costa)²⁹ had a series of comic opera dog and pony shows which, as Dr. Zelman pointed out, had an awful lot of folks from the Hispanic community show up, make presentations, make pleas, and the result, and here I will take issue with every member of this panel and particularly with respect to the Assembly, was a lot of sound and fury, signifying nothing. The Hispanic community's position is not improved as a result of those plans.

The comment was made that I had not addressed the Assembly, I had not addressed the Assembly in the interests of time, but I will in response now take just a moment to talk about the Assembly. The only sure open Hispanic seat in Los Angeles County is the Torres seat. A non-Hispanic could conceivably win the Martinez seat as he is running for Congress.³⁰ The Democrat Sally Tanner Assembly seat (60th District, Los Angeles), which was a strong Hispanic seat and growing more so, was gerrymandered in such a way as to improve it for Sally Tanner, who is a fine legislator but certainly not Hispanic. So in Los Angeles County the reapportionment plan is a wash, and the possibility exists of a loss of a seat despite all the talk of new seats around the state. And this is important. The proof of the pudding is in the eating. You know, we can talk about a standard set up by an organization or met by the committee, but the fact is that for all

28. See *supra* note 15.

29. Assemblyman Alatorre was Chairman of the Assembly Elections and Reapportionment Committee. Senator Boatwright was Chairman of the Senate Elections and Reapportionment Committee.

30. Martinez won the U.S. Congressional position for the 30th District; Charles Calderon (Democrat) won the former Martinez seat (Assembly District 59). 13 CALIF. J. 447-52 (Dec. 1982).

the talk about new Hispanic seats around the state, no Hispanic filed in the Fresno district or in the Bakersfield district or in the Santa Barbara/Ventura district. One Hispanic has filed for Assemblyman Deddeh's (Democrat, 80th District, San Diego) seat along the border in San Diego County, but the favorite in that Democratic party is an Anglo, so at best you have a very outside chance that a Hispanic will be elected from that district. In San Jose, where so much attention was paid in a surface way to meeting the concerns of the Hispanic community, in the new 25th District, you have four Anglos including one Republican, who are the leading candidates, and in the other races, all of the incumbent Democratic Anglos are safe, no Hispanics are running. So the net result is, you've got an outside chance of picking up perhaps the Deddeh seat, but a very long-shot chance. And a chance of losing the Martinez seat.

Now, why in the hell should a Republican care? It's a matter of simple self-interest from my perspective, and I'll be straight out honest with you about that. If seats are created in the Hispanic areas that increase the opportunity for Hispanic representation in the legislature and in the Congress, it follows as the night the day that in the suburban areas there will be greater opportunities to elect Republicans. Republicans are dramatically underrepresented in terms of their two-party vote in the State of California today as the Hispanic community is underrepresented in terms of the percentage of the population that they represent, and I am suggesting to you a symbiotic relationship. What works for you, at the same time works for us. Finally, the comments that the reapportionment commission contains no protections for the Hispanics, I dispute entirely. Today all you have is trust in the Anglo politicians who control the process, who put on a series of, as I say, dog and pony shows before maps are presented. And remarkably enough, the Secretary of State in testifying before the Elections and Reapportionment Committee this week in Sacramento admitted that they still have no detailed maps of the reapportionment plans that were passed last September. In contrast, the reapportionment commission and this is the significant element, contains very specific criteria. "Let us hear no more of trust in men," Jefferson said. Under the proper commission process, commissioners will be bound by strict criteria for the development of a reapportionment plan. More significantly for the Hispanic community, there must be extensive hearings held around the state *after* the plans are developed. So you will have the opportunity to present your point of view with a plan before it's law.

5. Alan G. Rosin:³¹

With regard to the reapportionment commission proposed by Common Cause and the California Republican Party, I think many might concur with Ms. Zamora's comment that such a commission, as proposed, would *not* serve Hispanic interests. I do not think it is necessary to repeat Ms. Zamora's analysis; it was to the point and well stated. Allow me to add one new comment, however.

As I have said to Walter Zelman of Common Cause on many occasions: if he and Common Cause really had had their way with this reapportionment commission proposal, they would have added a second portion to it, or at least had a second initiative. It would have concerned campaign finances.

Such an addition would be necessary because this reapportionment commission proposal would impact campaign costs. I think many of us already know that very large sums of money are being spent on political campaigns. As a result of this Zelman reapportionment commission proposal, campaign costs would rise even more significantly.

As a result of the way in which reapportionment now occurs, we end up with what some term "safe" districts. These are districts that are "safe", relatively speaking, for Democrats, for Republicans, for Blacks, Hispanics, etc. The purpose of the reapportionment commission, in the words of many of its designers, is to create more "competitive" districts.

Now, I must ask you to consider what determines the outcome in a so-called "competitive" district? If recent political campaign election history offers any answers, then the correct answer is "MONEY". The amount of campaign funds raised and expended seems to have an inordinate relationship, generally speaking, to who wins the election in so-called "competitive" or "swing" districts.

Simply put: create more competitive districts without also dealing with campaign finance, and you are going to increase the impact that dollars have in determining election outcomes.

That is why I say that Mr. Zelman, who is so eloquent about controlling campaign costs, really should not be so happy with his proposed reapportionment commission, because he knows it will end up even further escalating campaign costs. And Hispanics have nothing much to gain and much to lose as campaign costs continue to rise. They have only to look to their own experience in attempting to win some local Los Angeles elections, where the

31. See *supra* note 21.

Hispanic candidates have been at a distinct disadvantage in raising and competing for campaign funds.